

S.B. CIVIL WRIT PETITION NO.2287/2005
Sohan Lal Vs. Smt. Leela Devi & ors.

Date : 5.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. BL Choudhary, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 11.3.2005 by which the trial court allowed the application filed by the respondent no.1 under Order 9 Rule 13 C.P.C. for setting aside the ex-parte decree dated 21.1.2004 passed in Civil Original Suit No.40/2003.

It appears that the petitioner/plaintiff filed a suit for cancellation of sale deed which was alleged to be executed by the respondents no.2 and 3, who are real brother and sister-in-law of the petitioner. The sale deed was executed in favour of respondent no.1 against whom ex-parte decree has been passed and the trial court declared the sale deed in favour of respondent no.1 as null and void. The respondent no.1 submitted an application under Order 9 Rule 13 CPC along with an application for condonation of delay and affidavit in support thereof stating therein that because of assurances given by the sellers – respondents no.2 and 3, she could not contest the

suit whereas she is in possession of the property in dispute and she is having a registered sale deed in her favour. She has also invested huge amount on the property after purchase.

The trial court observed that the respondent no.1 was under an impression that the suit will be contested by the sellers and she being lady, if relied upon the assurance of the respondents no.2 and 3, she did not act without due care and on this ground, she cannot be denied opportunity to contest the suit. The trial court even imposed cost of Rs.10,000/- for setting aside the ex-parte decree.

According to learned counsel for the petitioner, admittedly the summon was served on the respondent no.1 and she did not appear in the Court and in view of the provisions of Order 9 Rule 13 CPC, once the summon is served, no objection about the irregularity of service can be a ground for setting aside the ex-parte decree.

The argument advanced by learned counsel for the petitioner has no application to the facts of this case. The respondent no.1 never sought decree to be set aside on the ground of irregularity in service but she sought setting aside of the decree by showing that she was prevented to contest the case and reason for her not contesting the suit was the assurance given by the sellers – respondents no.2 and 3 who themselves sold the property to the respondent no.1.

Since the trial court found the ground taken by the respondent no.1 as sufficient ground for non-appearance, then this Court finds that the impugned order cannot be said to be absolutely perverse or illegal so as to call for interference by this Court under writ jurisdiction.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya